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October 14, 2003

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VIA FEDERAL EXPRESS

The Honorable Deborah Taylor Tate  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Re: Application of Jackson Energy Authority

Dear Chairman Tate:

We have enclosed the original and 14 copies of the Objection of Jackson Energy Authority to Petition of Charter Communications, Inc. for Leave to Intervene and Request for Procedural Schedule. We have also enclosed an additional copy which we would appreciate your having stamped "filed" for return in the enclosed self-addressed stamped envelope.

If you have any questions concerning this filing, please do not hesitate to contact us.

Sincerely,



Mark W. Smith  
For the Firm

MWS:tm

JEA/TRA - #33

Enclosures

cc: J. Richard Collier, Hearing Officer (via facsimile 615-741-5015 and Federal Express)  
Henry Walker, Esq. (via facsimile 615- 252-6363 and U.S. Mail)  
Charles B. Welch, Jr., Esq. (via facsimile 615-726-1776 and U.S. Mail)

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE: :  
: :  
APPLICATION OF JACKSON ENERGY :  
AUTHORITY FOR A CERTIFICATE OF :  
CONVENIENCE AND NECESSITY TO : Docket No. 03-00438  
PROVIDE TELECOMMUNICATIONS :  
SERVICES AS A CARRIERS' CARRIER :

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**OBJECTION OF JACKSON ENERGY AUTHORITY TO PETITION OF  
CHARTER COMMUNICATIONS, INC. FOR LEAVE TO INTERVENE AND  
REQUEST FOR PROCEDURAL SCHEDULE**

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The afternoon of October 10, 2003, Charter Communications, Inc. ("Charter") filed a Petition to Intervene and Request for Procedural Schedule (the "Petition"). The Jackson Energy Authority ("JEA") respectfully submits that the Petition raises a single question that falls outside the statutory certification requirements under T.C.A. § 65-4-201(c), and further submits that a grant of the Petition would clearly impair the prompt and orderly conduct of this proceeding. The Hearing Officer should deny the Petition, because Charter already has the opportunity to address the application or interpretation of T.C.A. § 65-5-208(b) in a separate proceeding without impairing the prompt and orderly conduct of this proceeding at this late date.

An intervenor must specifically demonstrate its particular interest in the proceeding. T.C.A. § 4-5-310(a)(2); see T.C.A. § 4-5-310(c)(2) (permitting limitation of an intervenor's participation to "designated issues in which the intervenor has a particular interest demonstrated by the petition"). The single purpose demonstrated in the Petition is to allow Charter "to ensure that its interests are represented, insofar as they relate to exemption of certain services from regulatory requirements pursuant to T.C.A. § 65-5-208(6) [sic]." Petition, at Paragraph 3. Assuming that Charter's incorrect statutory reference is actually to T.C.A. § 65-5-208(b), then that statute is inapplicable to this proceeding, because JEA has not sought any such exemption

within its Application. Assuming further that Charter seeks to use JEA's Application<sup>1</sup> to gain an exemption pursuant to T.C.A. § 65-5-208(b) for services that Charter may already be providing or for services that Charter intends to provide in the future, JEA submits that the Petition raises an issue that falls outside the scope of the statutory certification requirements under T.C.A. § 65-4-201(c). Instead, the issue that Charter raises in the Petition requires a separate proceeding.

As the plain language of T.C.A. § 65-5-208(b) indicates, the Authority must give notice and an opportunity for hearing before it makes any public interest and policy finding contemplated in T.C.A. § 65-5-208(b). In at least two cases, incumbent carriers have petitioned the Authority to exempt certain services pursuant to this statute. See In re: Petition by the Tennessee Telecommunications Association to Exempt Voice Messaging from Regulation, Docket No. 00-00823; In re: Petition by BellSouth for Exemption of Certain Services, Docket No. 03-00391. If Charter believes that certain services should be exempted from regulation pursuant to T.C.A. § 65-5-208(b), then Charter should follow the same process as incumbent carriers have already followed: Charter should file a generic petition with the Authority. Discovery would presumably be available, all interested parties could participate, briefs could be submitted, and the Authority would ultimately resolve Charter's issue in a manner that would apply uniformly to all similarly-situated providers.

In contrast to this orderly approach to handling Charter's sole issue, Charter's Petition cannot be addressed within this proceeding without impairing the orderly and prompt conduct of the case, contrary to the requirements of T.C.A. § 4-5-310(b). Charter has simply filed the

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<sup>1</sup> For the reasons discussed below, JEA believes that issues arising from the application or interpretation of T.C.A. § 65-5-208(b) should be raised in a separate proceeding before the Authority. If, however, the Hearing Officer determines that these issues can be raised within the confines of a certification proceeding, then Charter has a pending application presently before the Authority. See In re: Charter Fiberlink-Tennessee, LLC, Docket No. 03-00521. The hearing has not been set in that case, the sixty day review period under T.C.A. § 65-4-201(c) has not yet run, and Charter should be directed to raise its issues within the confines of its own case.

Petition too late — 88 days<sup>2</sup> passed between the time JEA filed its Application and the time Charter filed its Petition; more than 65 days lapsed since counsel for Charter appeared at the August 4, 2003 Agenda Conference; and more than a week ran after the Hearing Officer's deadline for motions to change the date of the hearing. Charter's late filed request is plainly contrary to the Hearing Officer's notice of hearing dated September 25, 2003, and the certification process envisioned in T.C.A. § 65-4-201(c). The Hearing Officer should reject Charter's late filed request to conduct discovery and to set aside the existing hearing, because the Petition seeks relief that would plainly impair the prompt and orderly conduct of this case.

### CONCLUSION

Because the issues that Charter raises in its Petition are beyond the scope of this certification proceeding and cannot be addressed without impairing the prompt and orderly conduct of this proceeding, the Petition should be denied.

Respectfully submitted this 14<sup>th</sup> day of October, 2003.



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<sup>2</sup> The time for the certification process is fixed by statute. T.C.A. § 65-4-201(c). Because the 60 day period expired prior to Charter's filing of the Petition, JEA submits that, as a matter of law, "the orderly and prompt conduct of the proceedings" will be impaired if the Hearing Officer were to allow the intervention, T.C.A. § 4-5-310(a)(3) & (b), and the Authority's own rules do not permit Charter to seek an extension. See Tenn. R. & Regs. 1220-1-1-.11(2)(c).

CERTIFICATE OF SERVICE

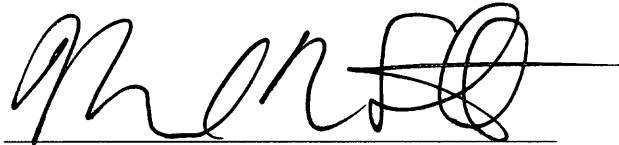
I certify that a true and exact copy of this pleading has been served upon the following attorneys by delivering a true and exact copy thereof to the offices of said counsel or by placing a true and exact copy of said pleading in the United States mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination:

J. Richard Collier, Esq.  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Charles B. Welch, Jr., Esq.  
Farris, Mathews, Branam, Bobango & Hellen, P.L.C.  
Historic Castner-Knott Building  
618 Church Street, Suite 300  
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Henry Walker, Esq.  
Boult, Cummings, Conners & Berry, PLC  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219

This 14th day of October, 2003.



For: Strang, Fletcher, Carriger, Walker,  
Hodge & Smith, PLLC